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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

July 16, 2012

James Taggart, President
Kenneth Taggart, Vice President
Gary Winslow, EH&S Manager
ECS Refining
705 Reed Street
Santa Clara, CA 95050

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act

Dear Mr. Taggart, Mr. Taggart, and Mr. Winslow:

I am writing on behalf of Global Community Monitor ("GCM") in regard to violations of the Clean Water Act ("Act") that GCM believes are occurring at ECS Refining ("Facility") located at 705 Reed Street in Santa Clara, California. Global Community Monitor is a non-profit public benefit corporation dedicated to working with communities located in industrial areas to create clean, healthy, and sustainable environments. GCM works directly with and has members living in the community adjacent to the Facility and the Guadalupe River watershed. GCM and its members are deeply concerned with protecting the environment in and around their communities, including the Guadalupe River and the San Francisco Bay (the "Bay"). This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "ECS").

This letter addresses ECS's unlawful discharge of pollutants from the Facility through the City of Santa Clara municipal storm sewer system into the Lower Guadalupe River, which flows into the Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WDID identification number for the Facility listed on documents submitted to the Regional Board is 243I005816. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, ECS is hereby placed on formal notice by GCM that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, GCM intends to file suit in federal court against ECS, James Taggart, Kenneth Taggart, and Gary Winslow under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

I. Background.

On April 1, 1992, ECS filed its Notice of Intent for General Permit to Discharge Storm Water Associated with Industrial Activity in Santa Clara County to South San Francisco Bay or its Tributaries. On May 20, 1997, ECS filed its Notice of Intent for Existing Facility Operators to Discharge Storm Water Associated with Industrial Activity (collectively "NOI"). On its NOI, ECS certifies that the Facility is classified under SIC code 3341 ("secondary smelting and refining of non ferrous metals"). However, on its annual reports submitted to the Regional Board, the last time that ECS indicated that its SIC code is 3341 was in the 2007-2008 Annual Report. In its subsequent reports, ECS has indicated that its SIC code is 5093 ("scrap metal recycling"). In its 2010-2011 Annual Report, ECS also indicated that its SIC code is 4953 ("hazardous waste treatment or disposal"). In its 2011-2012 Annual Report, ECS ceased indicating that SIC code 4953 applied to the Facility, and only reported that SIC code 5093 applies. The Facility collects and discharges storm water from its 1-acre industrial site through at least three outfalls[1] that discharge into channels that flow into the City of Santa Clara municipal storm sewer system, which in turn flows into the Lower Guadalupe River, which flows into San Francisco Bay.

[1] The Facility has reported different numbers of discharge locations over the years. In its 2007-2008 Annual Report, the Facility reported that it had two discharge locations, but that it had acquired a new building and would be adding new storm drains the following year. In its 2008-2009 Annual Report, it reported that there were seven discharge locations. In its 2009-2010 Annual Report, it reported that there were five discharge locations. In its 2010-2011, the Facility reported that there were four discharge locations. In its 2011-2012 Annual Report, the Facility reported that there were three discharge locations. Thus, GCM alleges that there are at least three and as many as seven storm water discharge locations. To the extent the Facility discharges to additional storm drains, this Notice also alleges all of the violations alleged in this Notice stemming from discharges to those drains.

The Regional Board has identified beneficial uses of the Bay region's waters and established water quality standards for the San Francisco Bay in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/docs/BP_all_chapters.pdf. The beneficial uses of these waters include among others contact and non-contact recreation, fish migration, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features." *Id.* at 2.1.16. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of the Bay for contact and non-contact water recreation.

Specific beneficial uses for the Lower Guadalupe River include cold freshwater habitat, freshwater replenishment, groundwater recharge, industrial service supply, fish migration, preservation of rare and endangered species, water contact recreation, noncontact water recreation, fish spawning, warm freshwater habitat, and wildlife habitat. *See* http://www.waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2002/R2-2002-0089.pdf.

The Basin Plan establishes water quality standards for the Guadalupe River and the San Francisco Bay. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms." *Id.* at 3.3.18. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use." *Id.* at 3.3.21. The Basin Plan includes a narrative oil and grease standard which states that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses." *Id.* at 3.3.7. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.14. The Basin Plan provides that "[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.6. The Basin Plan provides that "[t]he pH shall not be depressed below 6.5 nor raised above 8.5." *Id.* at 3.3.9.

The Basin Plan indicates that the Guadalupe River watershed is impaired for mercury. Urban stormwater runoff is one of the sources of mercury in the watershed. *Id.* at 7.7.1.2. The Basin Plan establishes a Total Maximum Daily Load in the Guadalupe River for mercury of 0.2 mg mercury per kg suspended sediment. *Id.* at Table 7.7.1-1. This load applies to urban stormwater runoff. *Id.* at Table 7.7.1-2.

The Basin Plan establishes Freshwater Water Quality Objectives for zinc of 0.12 mg/L (4-day average and 1-hour average); for lead of 0.0025 mg/L (4-day average) and 0.065 mg/L (1-hour average); for cadmium of 0.0011 mg/L (4-day average) and 0.0039 mg/L (1-hour average); for selenium of 0.005 mg/L (4-day average) and 0.02 mg/L (1-hour average); for silver of 0.0034 mg/L (1-hour average); for copper of 0.009 mg/L (4-day average) and 0.013 mg/L (1-hour average) and for mercury of 0.000025 mg/L (4-day average) and 0.0024 mg/L (1-hour average). *Id.* at Table 3-4.[2] The Basin Plan establishes Water Quality Objectives for copper in the lower South San Francisco Bay applying to marine and estuarine waters contiguous to SF Bay, south of the Dumbarton Bridge, of 0.0069 mg/L (4-day average) and 0.0108 mg/L 1-hour average). The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – "CMC" and Criteria Continuous Concentration – "CCC"); for copper of 0.009 mg/L (CCC) and 0.013 mg/L (CMC); for lead of 0.0025 mg/L (CCC) and 0.065 mg/L (CMC); for cadmium of 0.0022 mg/L (CCC) and 0.0043 mg/L (CMC); for selenium of 0.005 mg/L (CCC); and for silver of 0.0034 mg/L (CMC). 65 Fed.Reg. 31712 (May 18, 2000) (California Toxics Rule).[3]

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). The following benchmarks have been established for pollutants discharged by ECS: pH – 6.0 - 9.0 units; total suspended solids ("TSS") – 100 mg/L, oil and grease ("O&G") – 15 mg/L, chemical oxygen demand ("COD") – 120 mg/L, aluminum – 0.75 mg/L, zinc – 0.117 mg/L, iron – 1.0 mg/L, copper – 0.0636 mg/L, lead – 0.0816 mg/L, cadmium – 0.0159 mg/L, selenium – 0.2385 mg/L, silver – 0.318 mg/L, magnesium – 0.0636 mg/L, and mercury – 0.0024 mg/L.[4] The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

ECS has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. §

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[2] The values for silver and cadmium are based on a hardness of 100 mg/L as $CaCO_3$.
[3] The values for silver and cadmium are based on a hardness of 100 mg/L.
[4] The values for cadmium and silver are hardness dependent.

1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand ("BOD"), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

ECS has discharged and continues to discharge storm water with unacceptable levels of pH, total suspended solids, specific conductivity, chemical oxygen demand, oil & grease, iron, aluminum, copper, lead, zinc, cadmium, selenium, silver, magnesium, mercury and other pollutants in violation of the General Permit. ECS's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan and the California Toxics Rule ("CTR") and has thus violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
10/31/2011	pH	5.9	6.5 – 8.5	735 Reed Street
10/31/2011	pH	5.7	6.5 – 8.5	B Warehouse
10/31/2011	pH	6.4	6.5 – 8.5	C Dock
3/18/2011	pH	6	6.5 – 8.5	B Warehouse
3/18/2011	pH	6	6.5 – 8.5	735 Reed Street
3/18/2011	pH	6	6.5 – 8.5	C Loading Dock
1/18/2010	pH	8.68	6.5 – 8.5	A Warehouse
4/7/2009	pH	6.48	6.5 – 8.5	Reed St. Driveway 1
2/11/2009	pH	9.1	6.5 – 8.5	D Warehouse
1/16/2008	pH	5.86	6.5 – 8.5	A Yard
1/16/2008	pH	5.89	6.5 – 8.5	C Yard
10/31/2011	Lead	2.4 mg/L	0.0025 mg/L (4-day average)	735 Reed Street
10/31/2011	Lead	2.4 mg/L	0.065 mg/L (1-hour average)	735 Reed Street
10/31/2011	Lead	2.9 mg/L	0.0025 mg/L (4-day average)	B Warehouse
10/31/2011	Lead	2.9 mg/L	0.065 mg/L (1-hour average)	B Warehouse
10/31/2011	Lead	1.3 mg/L	0.0025 mg/L (4-day average)	C Dock
10/31/2011	Lead	1.3 mg/L	0.065 mg/L (1-hour average)	C Dock
3/18/2011	Lead	3.3 mg/L	0.0025 mg/L (4-day average)	C Warehouse Yard
3/18/2011	Lead	3.3 mg/L	0.065 mg/L (1-hour average)	C Warehouse Yard
3/18/2011	Lead	17 mg/L	0.0025 mg/L (4-day average)	B Warehouse
3/18/2011	Lead	17 mg/L	0.065 mg/L (1-hour average)	B Warehouse
3/18/2011	Lead	2.3 mg/L	0.0025 mg/L (4-day average)	735 Reed Street
3/18/2011	Lead	2.3 mg/L	0.065 mg/L (1-hour average)	735 Reed Street
3/18/2011	Lead	4.5 mg/L	0.0025 mg/L (4-day average)	C Loading Dock
3/18/2011	Lead	4.5 mg/L	0.065 mg/L (1-hour	C Loading

			average)	Dock
2/23/2010	Lead	0.41 mg/L	0.0025 mg/L (4-day average)	A Warehouse
2/23/2010	Lead	0.41 mg/L	0.065 mg/L (1-hour average)	A Warehouse
2/23/2010	Lead	0.27 mg/L	0.0025 mg/L (4-day average)	C Warehouse
2/23/2010	Lead	0.27 mg/L	0.065 mg/L (1-hour average)	C Warehouse
2/23/2010	Lead	1.7 mg/L	0.0025 mg/L (4-day average)	B Warehouse
2/23/2010	Lead	1.7 mg/L	0.065 mg/L (1-hour average)	B Warehouse
2/23/2010	Lead	1.4 mg/L	0.0025 mg/L (4-day average)	735 Reed Driveway
2/23/2010	Lead	1.4 mg/L	0.065 mg/L (1-hour average)	735 Reed Driveway
2/23/2010	Lead	0.54 mg/L	0.0025 mg/L (4-day average)	C Loading Dock
2/23/2010	Lead	0.54 mg/L	0.065 mg/L (1-hour average)	C Loading Dock
1/18/2010	Lead	0.146 mg/L	0.0025 mg/L (4-day average)	Reed St. #2
1/18/2010	Lead	0.146 mg/L	0.065 mg/L (1-hour average)	Reed St. #2
1/18/2010	Lead	0.483 mg/L	0.0025 mg/L (4-day average)	Baghouse
1/18/2010	Lead	0.483 mg/L	0.065 mg/L (1-hour average)	Baghouse
1/18/2010	Lead	0.095 mg/L	0.0025 mg/L (4-day average)	A Warehouse
1/18/2010	Lead	0.095 mg/L	0.065 mg/L (1-hour average)	A Warehouse
1/18/2010	Lead	0.143 mg/L	0.0025 mg/L (4-day average)	A Warehouse West Wall
1/18/2010	Lead	0.143 mg/L	0.065 mg/L (1-hour average)	A Warehouse West Wall
1/18/2010	Lead	0.163 mg/L	0.0025 mg/L (4-day average)	Reed St. #1
1/18/2010	Lead	0.163 mg/L	0.065 mg/L (1-hour average)	Reed St. #1
4/7/2009	Lead	0.041 mg/L	0.0025 mg/L (4-day average)	A Warehouse

4/7/2009	Lead	0.051 mg/L	0.0025 mg/L (4-day average)	C Warehouse
4/7/2009	Lead	0.011 mg/L	0.0025 mg/L (4-day average)	D Warehouse
4/7/2009	Lead	0.62 mg/L	0.065 mg/L (1-hour average)	Baghouse
4/7/2009	Lead	0.62 mg/L	0.0025 mg/L (4-day average)	Baghouse
4/7/2009	Lead	0.26 mg/L	0.065 mg/L (1-hour average)	A Warehouse W. Wall
4/7/2009	Lead	0.26 mg/L	0.0025 mg/L (4-day average)	A Warehouse W. Wall
4/7/2009	Lead	0.12 mg/L	0.065 mg/L (1-hour average)	Reed St. Driveway 1
4/7/2009	Lead	0.12 mg/L	0.0025 mg/L (4-day average)	Reed St. Driveway 1
4/7/2009	Lead	0.14 mg/L	0.065 mg/L (1-hour average)	Reed St. Driveway 2
4/7/2009	Lead	0.14 mg/L	0.0025 mg/L (4-day average)	Reed St. Driveway 2
2/11/2009	Lead	1.1 mg/L	0.065 mg/L (1-hour average)	A Warehouse
2/11/2009	Lead	1.1 mg/L	0.0025 mg/L (4-day average)	A Warehouse
2/11/2009	Lead	0.37 mg/L	0.065 mg/L (1-hour average)	C Warehouse
2/11/2009	Lead	0.37 mg/L	0.0025 mg/L (4-day average)	C Warehouse
2/11/2009	Lead	4.4 mg/L	0.065 mg/L (1-hour average)	D Warehouse
2/11/2009	Lead	4.4 mg/L	0.0025 mg/L (4-day average)	D Warehouse
2/11/2009	Lead	0.26 mg/L	0.065 mg/L (1-hour average)	Baghouse
2/11/2009	Lead	0.26 mg/L	0.0025 mg/L (4-day average)	Baghouse
2/11/2009	Lead	2.6 mg/L	0.065 mg/L (1-hour average)	A Warehouse W. Wall
2/11/2009	Lead	2.6 mg/L	0.0025 mg/L (4-day average)	A Warehouse W. Wall
2/11/2009	Lead	2.1 mg/L	0.065 mg/L (1-hour average)	Reed St. Driveway 1
2/11/2009	Lead	2.1 mg/L	0.0025 mg/L (4-day	Reed St.

			average)	Driveway 1
2/11/2009	Lead	0.24 mg/L	0.065 mg/L (1-hour average)	Reed St. Driveway 2
2/11/2009	Lead	0.24 mg/L	0.0025 mg/L (4-day average)	Reed St. Driveway 2
1/16/2008	Lead	0.05 mg/L	0.0025 mg/L (4-day average)	A Yard
10/31/2011	Zinc	11 mg/L	0.12 mg/L (1-hour average and 4-day average)	735 Reed Street
10/31/2011	Zinc	9.6 mg/L	0.12 mg/L (1-hour average and 4-day average)	B Warehouse
10/31/2011	Zinc	2.9 mg/L	0.12 mg/L (1-hour average and 4-day average)	C Dock
3/18/2010	Zinc	2.6 mg/L	0.12 mg/L (1-hour average and 4-day average)	C Warehouse Yard
3/18/2010	Zinc	13 mg/L	0.12 mg/L (1-hour average and 4-day average)	B Warehouse
3/18/2010	Zinc	2.2 mg/L	0.12 mg/L (1-hour average and 4-day average)	735 Reed Street
3/18/2010	Zinc	3.9 mg/L	0.12 mg/L (1-hour average and 4-day average)	C Loading Dock
2/23/2010	Zinc	0.99 mg/L	0.12 mg/L (1-hour average and 4-day average)	A Warehouse
2/23/2010	Zinc	0.52 mg/L	0.12 mg/L (1-hour average and 4-day average)	C Warehouse
2/23/2010	Zinc	1.8 mg/L	0.12 mg/L (1-hour average and 4-day average)	B Warehouse
2/23/2010	Zinc	2.5 mg/L	0.12 mg/L (1-hour average and 4-day average)	735 Reed Driveway
2/23/2010	Zinc	0.97 mg/L	0.12 mg/L (1-hour average and 4-day average)	C Loading Dock

10/31/2011	Cadmium	0.015 mg/L	0.0011 mg/L (4-day average)	735 Reed Street
10/31/2011	Cadmium	0.015 mg/L	0.0039 mg/L (1-hour average)	735 Reed Street
10/31/2011	Cadmium	0.12 mg/L	0.0011 mg/L (4-day average)	B Warehouse
10/31/2011	Cadmium	0.12 mg/L	0.0039 mg/L (1-hour average)	B Warehouse
10/31/2011	Cadmium	0.032 mg/L	0.0011 mg/L (4-day average)	C Dock
10/31/2011	Cadmium	0.032 mg/L	0.0039 mg/L (1-hour average)	C Dock
3/18/2011	Cadmium	0.041 mg/L	0.0011 mg/L (4-day average)	C Warehouse Yard
3/18/2011	Cadmium	0.041 mg/L	0.0039 mg/L (1-hour average)	C Warehouse Yard
3/18/2011	Cadmium	0.17 mg/L	0.0011 mg/L (4-day average)	B Warehouse
3/18/2011	Cadmium	0.17 mg/L	0.0039 mg/L (1-hour average)	B Warehouse
3/18/2011	Cadmium	0.039 mg/L	0.0011 mg/L (4-day average)	735 Reed Street
3/18/2011	Cadmium	0.039 mg/L	0.0039 mg/L (1-hour average)	735 Reed Street
3/18/2011	Cadmium	0.048 mg/L	0.0011 mg/L (4-day average)	C Loading Dock
3/18/2011	Cadmium	0.048 mg/L	0.0039 mg/L (1-hour average)	C Loading Dock
3/18/2011	Selenium	0.026 mg/L	0.005 mg/L (4-day average)	B Warehouse
3/18/2011	Selenium	0.026 mg/L	0.02 mg/L (1-hour average)	B Warehouse
3/18/2011	Selenium	0.02 mg/L	0.005 mg/L (4-day average)	735 Reed Street
10/31/2011	Silver	0.27 mg/L	0.0034 mg/L (1-hour average)	735 Reed Street
10/31/2011	Silver	0.27 mg/L	0.0034 mg/L (1-hour average)	B Warehouse
10/31/2011	Silver	0.19 mg/L	0.0034 mg/L (1-hour average)	C Dock
3/18/2011	Silver	0.013 mg/L	0.0034 mg/L (1-hour average)	C Warehouse Yard
3/18/2011	Silver	0.014 mg/L	0.0034 mg/L (1-hour	B Warehouse

			average)	
3/18/2011	Silver	0.012 mg/L	0.0034 mg/L (1-hour average)	735 Reed Street
3/18/2011	Silver	0.0081 mg/L	0.0034 mg/L (1-hour average)	C Loading Dock
2/23/2010	Silver	0.43 mg/L	0.0034 mg/L (1-hour average)	A Warehouse
2/23/2010	Silver	0.04 mg/L	0.0034 mg/L (1-hour average)	C Warehouse
2/23/2010	Silver	0.26 mg/L	0.0034 mg/L (1-hour average)	B Warehouse
2/23/2010	Silver	0.22 mg/L	0.0034 mg/L (1-hour average)	735 Reed Driveway
2/23/2010	Silver	0.08 mg/L	0.0034 mg/L (1-hour average)	C Loading Dock
1/18/2010	Silver	0.006 mg/L	0.0034 mg/L (1-hour average)	Reed St. #2
1/18/2010	Silver	0.028 mg/L	0.0034 mg/L (1-hour average)	Baghouse
1/18/2010	Silver	0.061 mg/L	0.0034 mg/L (1-hour average)	A Warehouse
1/18/2010	Silver	0.009 mg/L	0.0034 mg/L (1-hour average)	A Warehouse West Wall
1/18/2010	Silver	0.008 mg/L	0.0034 mg/L (1-hour average)	Reed St. #1
4/7/2009	Silver	0.009 mg/L	0.0034 mg/L (1-hour average)	A Warehouse
4/7/2009	Silver	0.012 mg/L	0.0034 mg/L (1-hour average)	C Warehouse
4/7/2009	Silver	0.012 mg/L	0.0034 mg/L (1-hour average)	Baghouse
4/7/2009	Silver	0.045 mg/L	0.0034 mg/L (1-hour average)	A Warehouse W. Wall
4/7/2009	Silver	0.008 mg/L	0.0034 mg/L (1-hour average)	Reed St. Driveway 1
4/7/2009	Silver	0.009 mg/L	0.0034 mg/L (1-hour average)	Reed St. Driveway 2
2/11/2009	Silver	0.8 mg/L	0.0034 mg/L (1-hour average)	A Warehouse
2/11/2009	Silver	0.14 mg/L	0.0034 mg/L (1-hour average)	C Warehouse
2/11/2009	Silver	0.57 mg/L	0.0034 mg/L (1-hour average)	D Warehouse

2/11/2009	Silver	0.039 mg/L	0.0034 mg/L (1-hour average)	Baghouse
2/11/2009	Silver	0.68 mg/L	0.0034 mg/L (1-hour average)	A Warehouse W. Wall
2/11/2009	Silver	0.42 mg/L	0.0034 mg/L (1-hour average)	Reed St. Driveway 1
2/11/2009	Silver	0.024 mg/L	0.0034 mg/L (1-hour average)	Reed St. Driveway 2
10/31/2011	Narrative	Floating debris, plastic		B Warehouse
3/10/2011	Narrative	Floating plastic debris and soil particulates		All yard areas
10/31/2011	Copper	1.8 mg/L	0.009 mg/L (4-day average)	735 Reed Street
10/31/2011	Copper	1.8 mg/L	0.013 mg/L (1-hour average)	735 Reed Street
10/31/2011	Copper	1.3 mg/L	0.009 mg/L (4-day average)	B Warehouse
10/31/2011	Copper	1.3 mg/L	0.013 mg/L (1-hour average)	B Warehouse
10/31/2011	Copper	0.49 mg/L	0.009 mg/L (4-day average)	C Dock
10/31/2011	Copper	0.49 mg/L	0.013 mg/L (1-hour average)	C Dock
3/18/2011	Copper	0.36 mg/L	0.009 mg/L (4-day average)	C Warehouse Yard
3/18/2011	Copper	0.36 mg/L	0.013 mg/L (1-hour average)	C Warehouse Yard
3/18/2011	Copper	1.1 mg/L	0.009 mg/L (4-day average)	B Warehouse
3/18/2011	Copper	1.1 mg/L	0.013 mg/L (1-hour average)	B Warehouse
3/18/2011	Copper	0.33 mg/L	0.009 mg/L (4-day average)	735 Reed Street
3/18/2011	Copper	0.33 mg/L	0.013 mg/L (1-hour average)	735 Reed Street
3/18/2011	Copper	0.41 mg/L	0.009 mg/L (4-day average)	C Loading Dock
3/18/2011	Copper	0.41 mg/L	0.013 mg/L (1-hour average)	C Loading Dock
2/23/2010	Copper	0.2 mg/L	0.009 mg/L (4-day average)	A Warehouse

2/23/2010	Copper	0.2 mg/L	0.013 mg/L (1-hour average)	A Warehouse
2/23/2010	Copper	0.07 mg/L	0.009 mg/L (4-day average)	C Warehouse
2/23/2010	Copper	0.07 mg/L	0.013 mg/L (1-hour average)	C Warehouse
2/23/2010	Copper	0.45 mg/L	0.009 mg/L (4-day average)	B Warehouse
2/23/2010	Copper	0.45 mg/L	0.013 mg/L (1-hour average)	B Warehouse
2/23/2010	Copper	0.72 mg/L	0.009 mg/L (4-day average)	735 Reed Driveway
2/23/2010	Copper	0.72 mg/L	0.013 mg/L (1-hour average)	735 Reed Driveway
2/23/2010	Copper	0.13 mg/L	0.009 mg/L (4-day average)	C Loading Dock
2/23/2010	Copper	0.13 mg/L	0.013 mg/L (1-hour average)	C Loading Dock
1/18/2010	Copper	0.108 mg/L	0.009 mg/L (4-day average)	Reed St. #2
1/18/2010	Copper	0.108 mg/L	0.013 mg/L (1-hour average)	Reed St. #2
1/18/2010	Copper	0.076 mg/L	0.009 mg/L (4-day average)	Baghouse
1/18/2010	Copper	0.076 mg/L	0.013 mg/L (1-hour average)	Baghouse
1/18/2010	Copper	0.056 mg/L	0.009 mg/L (4-day average)	A Warehouse
1/18/2010	Copper	0.056 mg/L	0.013 mg/L (1-hour average)	A Warehouse
1/18/2010	Copper	0.068 mg/L	0.009 mg/L (4-day average)	A Warehouse West Wall
1/18/2010	Copper	0.068 mg/L	0.013 mg/L (1-hour average)	A Warehouse West Wall
1/18/2010	Copper	0.085 mg/L	0.009 mg/L (4-day average)	Reed St. #1
1/18/2010	Copper	0.085 mg/L	0.013 mg/L (1-hour average)	Reed St. #1
4/7/2009	Copper	0.1 mg/L	0.009 mg/L (4-day average)	A Warehouse
4/7/2009	Copper	0.1 mg/L	0.013 mg/L (1-hour average)	A Warehouse
4/7/2009	Copper	0.13 mg/L	0.009 mg/L (4-day	C Warehouse

			average)	
4/7/2009	Copper	0.13 mg/L	0.013 mg/L (1-hour average)	C Warehouse
4/7/2009	Copper	0.061 mg/L	0.009 mg/L (4-day average)	D Warehouse
4/7/2009	Copper	0.061 mg/L	0.013 mg/L (1-hour average)	D Warehouse
4/7/2009	Copper	0.58 mg/L	0.009 mg/L (4-day average)	Baghouse
4/7/2009	Copper	0.58 mg/L	0.013 mg/L (1-hour average)	Baghouse
4/7/2009	Copper	0.64 mg/L	0.009 mg/L (4-day average)	A Warehouse W. Wall
4/7/2009	Copper	0.64 mg/L	0.013 mg/L (1-hour average)	A Warehouse W. Wall
4/7/2009	Copper	0.42 mg/L	0.009 mg/L (4-day average)	Reed St. Driveway 1
4/7/2009	Copper	0.42 mg/L	0.013 mg/L (1-hour average)	Reed St. Driveway 1
4/7/2009	Copper	0.64 mg/L	0.009 mg/L (4-day average)	Reed St. Driveway 2
4/7/2009	Copper	0.64 mg/L	0.013 mg/L (1-hour average)	Reed St. Driveway 2
2/11/2009	Copper	0.42 mg/L	0.009 mg/L (4-day average)	A Warehouse
2/11/2009	Copper	0.42 mg/L	0.013 mg/L (1-hour average)	A Warehouse
2/11/2009	Copper	0.18 mg/L	0.009 mg/L (4-day average)	C Warehouse
2/11/2009	Copper	0.18 mg/L	0.013 mg/L (1-hour average)	C Warehouse
2/11/2009	Copper	0.72 mg/L	0.009 mg/L (4-day average)	D Warehouse
2/11/2009	Copper	0.72 mg/L	0.013 mg/L (1-hour average)	D Warehouse
2/11/2009	Copper	0.097 mg/L	0.009 mg/L (4-day average)	Baghouse
2/11/2009	Copper	0.097 mg/L	0.013 mg/L (1-hour average)	Baghouse
2/11/2009	Copper	0.85 mg/L	0.009 mg/L (4-day average)	A Warehouse W. Wall
2/11/2009	Copper	0.85 mg/L	0.013 mg/L (1-hour average)	A Warehouse W. Wall

2/11/2009	Copper	0.65 mg/L	0.009 mg/L (4-day average)	Reed St. Driveway 1
2/11/2009	Copper	0.65 mg/L	0.013 mg/L (1-hour average)	Reed St. Driveway 1
2/11/2009	Copper	0.25 mg/L	0.009 mg/L (4-day average)	Reed St. Driveway 2
2/11/2009	Copper	0.25 mg/L	0.013 mg/L (1-hour average)	Reed St. Driveway 2
10/31/2011	Mercury	0.038 mg/L	0.000025 mg/L (4-day average)	735 Reed Street
10/31/2011	Mercury	0.038 mg/L	0.0024 mg/L (1-hour average)	735 Reed Street
10/31/2011	Mercury	0.039 mg/L	0.000025 mg/L (4-day average)	B Warehouse
10/31/2011	Mercury	0.039 mg/L	0.0024 mg/L (1-hour average)	B Warehouse
10/31/2011	Mercury	0.017 mg/L	0.000025 mg/L (4-day average)	C Dock
10/31/2011	Mercury	0.017 mg/L	0.0024 mg/L (1-hour average)	C Dock
3/18/2011	Mercury	0.067 mg/L	0.000025 mg/L (4-day average)	C Warehouse Yard
3/18/2011	Mercury	0.067 mg/L	0.0024 mg/L (1-hour average)	C Warehouse Yard
3/18/2011	Mercury	0.11 mg/L	0.000025 mg/L (4-day average)	B Warehouse
3/18/2011	Mercury	0.11 mg/L	0.0024 mg/L (1-hour average)	B Warehouse
3/18/2011	Mercury	0.017 mg/L	0.000025 mg/L (4-day average)	735 Reed Street
3/18/2011	Mercury	0.017 mg/L	0.0024 mg/L (1-hour average)	735 Reed Street
3/18/2011	Mercury	0.037 mg/L	0.000025 mg/L (4-day average)	C Loading Dock
3/18/2011	Mercury	0.037 mg/L	0.0024 mg/L (1-hour average)	C Loading Dock

The information in the above table reflects data gathered from ECS's self-monitoring during the 2007-2008, 2008-2009, 2009-2010, 2010-2011, and 2011-2012 wet seasons. GCM alleges that during each of those rainy seasons and continuing through today, ECS has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – between 6.5 and 8.5
- Lead – 0.0025 mg/L (4-day average)
- Lead – 0.065 mg/L (1-hour average)
- Zinc – 0.12 mg/L (1-hour average and 4-day average)
- Cadmium – 0.0011 mg/L (4-hour average)
- Cadmium – 0.0039 mg/L (1-hour average)
- Selenium – 0.005 mg/L (4-day average)
- Selenium – 0.02 mg/L (1-hour average)
- Silver – 0.0034 mg/L (1-hour average)
- Copper – 0.009 mg/L (4-day average)
- Copper – 0.013 mg/L (1-hour average)
- Mercury – 0.000025 mg/L (4-day average)
- Mercury – 0.0024 mg/L (1-hour average)
- Floating Material – waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value	Location (as identified by the Facility)
10/31/2011	pH	5.9 SU	6.0 - 9.0 SU	735 Reed Street
10/31/2011	Total Suspended Solids	1100 mg/L	100 mg/L	735 Reed Street
10/31/2011	Specific Conductivity	1050 µmho/cm	200 µmho/cm (proposed)	735 Reed Street
10/31/2011	Oil & Grease	74 mg/L	15 mg/L	735 Reed Street
10/31/2011	Chemical Oxygen Demand	790 mg/L	120 mg/L	735 Reed Street
10/31/2011	Iron	36 mg/L	1.0 mg/L	735 Reed Street
10/31/2011	Aluminum	18 mg/L	0.75 mg/L	735 Reed Street
10/31/2011	Copper	1.8 mg/L	0.0636 mg/L	735 Reed Street
10/31/2011	Lead	2.4 mg/L	0.0816 mg/L	735 Reed Street
10/31/2011	Zinc	11 mg/L	0.117 mg/L	735 Reed Street
10/31/2011	Selenium	0.88 mg/L	0.2385 mg/L	735 Reed Street
10/31/2011	Magnesium	25 mg/L	0.0636 mg/L	735 Reed Street
10/31/2011	Mercury	0.038 mg/L	0.0024 mg/L	735 Reed Street
10/31/2011	pH	5.7 SU	6.0 - 9.0 SU	B Warehouse
10/31/2011	Total Suspended Solids	420 mg/L	100 mg/L	B Warehouse
10/31/2011	Specific Conductivity	880 µmho/cm	200 µmho/cm (proposed)	B Warehouse
10/31/2011	Chemical Oxygen Demand	2270 mg/L	120 mg/L	B Warehouse

10/31/2011	Iron	27 mg/L	1.0 mg/L	B Warehouse
10/31/2011	Aluminum	7.4 mg/L	0.75 mg/L	B Warehouse
10/31/2011	Copper	1.3 mg/L	0.0636 mg/L	B Warehouse
10/31/2011	Lead	2.9 mg/L	0.0816 mg/L	B Warehouse
10/31/2011	Zinc	9.6 mg/L	0.117 mg/L	B Warehouse
10/31/2011	Selenium	0.54 mg/L	0.2385 mg/L	B Warehouse
10/31/2011	Magnesium	15 mg/L	0.0636 mg/L	B Warehouse
10/31/2011	Mercury	0.039 mg/L	0.0024 mg/L	B Warehouse
10/31/2011	Total Suspended Solids	240 mg/L	100 mg/L	C Dock
10/31/2011	Specific Conductivity	540 µmho/cm	200 µmho/cm (proposed)	C Dock
10/31/2011	Chemical Oxygen Demand	3180 mg/L	120 mg/L	C Dock
10/31/2011	Iron	14 mg/L	1.0 mg/L	C Dock
10/31/2011	Aluminum	6.4 mg/L	0.75 mg/L	C Dock
10/31/2011	Copper	0.49 mg/L	0.0636 mg/L	C Dock
10/31/2011	Lead	1.3 mg/L	0.0816 mg/L	C Dock
10/31/2011	Zinc	2.9 mg/L	0.117 mg/L	C Dock
10/31/2011	Cadmium	0.032 mg/L	0.0159 mg/L	C Dock
10/31/2011	Selenium	0.24 mg/L	0.2385 mg/L	C Dock
10/31/2011	Magnesium	8.5 mg/L	0.0636 mg/L	C Dock
10/31/2011	Mercury	0.017 mg/L	0.0024 mg/L	C Dock
3/18/2011	Total Suspended Solids	260 mg/L	100 mg/L	C Warehouse Yard
3/18/2011	Chemical Oxygen Demand	310 mg/L	120 mg/L	C Warehouse Yard
3/18/2011	Aluminum	3.2 mg/L	0.75 mg/L	C Warehouse Yard
3/18/2011	Copper	0.36 mg/L	0.0636 mg/L	C Warehouse Yard
3/18/2011	Lead	3.3 mg/L	0.0816 mg/L	C Warehouse Yard
3/18/2011	Zinc	2.6 mg/L	0.117 mg/L	C Warehouse Yard
3/18/2011	Cadmium	0.041 mg/L	0.0159 mg/L	C Warehouse Yard
3/18/2011	Magnesium	1.5 mg/L	0.0636 mg/L	C Warehouse Yard
3/18/2011	Mercury	0.067 mg/L	0.0024 mg/L	C Warehouse Yard
3/18/2011	Total Suspended Solids	2400 mg/L	100 mg/L	B Warehouse
3/18/2011	Oil & Grease	21 mg/L	15 mg/L	B Warehouse
3/18/2011	Chemical Oxygen Demand	1200 mg/L	120 mg/L	B Warehouse
3/18/2011	Aluminum	14 mg/L	0.75 mg/L	B Warehouse
3/18/2011	Copper	1.1 mg/L	0.0636 mg/L	B Warehouse
3/18/2011	Lead	17 mg/L	0.0816 mg/L	B Warehouse
3/18/2011	Zinc	13 mg/L	0.117 mg/L	B Warehouse
3/18/2011	Cadmium	0.17 mg/L	0.0159 mg/L	B Warehouse
3/18/2011	Magnesium	4.2 mg/L	0.0636 mg/L	B Warehouse
3/18/2011	Mercury	0.11 mg/L	0.0024 mg/L	B Warehouse
3/18/2011	Total Suspended Solids	320 mg/L	100 mg/L	735 Reed Street
3/18/2011	Oil & Grease	19 mg/L	15 mg/L	735 Reed Street
3/18/2011	Chemical Oxygen Demand	420 mg/L	120 mg/L	735 Reed Street

3/18/2011	Aluminum	2.8 mg/L	0.75 mg/L	735 Reed Street
3/18/2011	Copper	0.33 mg/L	0.0636 mg/L	735 Reed Street
3/18/2011	Lead	2.3 mg/L	0.0816 mg/L	735 Reed Street
3/18/2011	Zinc	2.2 mg/L	0.117 mg/L	735 Reed Street
3/18/2011	Cadmium	0.039 mg/L	0.0159 mg/L	735 Reed Street
3/18/2011	Magnesium	2 mg/L	0.0636 mg/L	735 Reed Street
3/18/2011	Mercury	0.017 mg/L	0.0024 mg/L	735 Reed Street
3/18/2011	Total Suspended Solids	320 mg/L	100 mg/L	C Loading Dock
3/18/2011	Chemical Oxygen Demand	450 mg/L	120 mg/L	C Loading Dock
3/18/2011	Aluminum	4.5 mg/L	0.75 mg/L	C Loading Dock
3/18/2011	Copper	0.41 mg/L	0.0636 mg/L	C Loading Dock
3/18/2011	Lead	4.5 mg/L	0.0816 mg/L	C Loading Dock
3/18/2011	Zinc	3.9 mg/L	0.117 mg/L	C Loading Dock
3/18/2011	Cadmium	0.048 mg/L	0.0159 mg/L	C Loading Dock
3/18/2011	Magnesium	1.7 mg/L	0.0636 mg/L	C Loading Dock
3/18/2011	Mercury	0.037 mg/L	0.0024 mg/L	C Loading Dock
2/23/2010	Total Suspended Solids	140 mg/L	100 mg/L	A Warehouse
2/23/2010	Iron	5.5 mg/L	1.0 mg/L	A Warehouse
2/23/2010	Aluminum	1.9 mg/L	0.75 mg/L	A Warehouse
2/23/2010	Copper	0.2 mg/L	0.0636 mg/L	A Warehouse
2/23/2010	Lead	0.41 mg/L	0.0816 mg/L	A Warehouse
2/23/2010	Zinc	0.99 mg/L	0.117 mg/L	A Warehouse
2/23/2010	Silver	0.43 mg/L	0.318 mg/L	A Warehouse
2/23/2010	Iron	3.1 mg/L	1.0 mg/L	C Warehouse
2/23/2010	Aluminum	1.6 mg/L	0.75 mg/L	C Warehouse
2/23/2010	Lead	0.27 mg/L	0.0816 mg/L	C Warehouse
2/23/2010	Zinc	0.52 mg/L	0.117 mg/L	C Warehouse
2/23/2010	Total Suspended Solids	360 mg/L	100 mg/L	B Warehouse
2/23/2010	Chemical Oxygen Demand	200 mg/L	120 mg/L	B Warehouse
2/23/2010	Iron	14 mg/L	1.0 mg/L	B Warehouse
2/23/2010	Aluminum	6.4 mg/L	0.75 mg/L	B Warehouse
2/23/2010	Copper	0.45 mg/L	0.0636 mg/L	B Warehouse
2/23/2010	Lead	1.7 mg/L	0.0816 mg/L	B Warehouse
2/23/2010	Zinc	1.8 mg/L	0.117 mg/L	B Warehouse
2/23/2010	Total Suspended Solids	240 mg/L	100 mg/L	735 Reed Driveway
2/23/2010	Chemical Oxygen Demand	180 mg/L	120 mg/L	735 Reed Driveway
2/23/2010	Iron	13 mg/L	1.0 mg/L	735 Reed Driveway
2/23/2010	Aluminum	6.7 mg/L	0.75 mg/L	735 Reed Driveway
2/23/2010	Copper	0.72 mg/L	0.0636 mg/L	735 Reed Driveway
2/23/2010	Lead	1.4 mg/L	0.0816 mg/L	735 Reed Driveway
2/23/2010	Zinc	2.5 mg/L	0.117 mg/L	735 Reed Driveway
2/23/2010	Iron	4.6 mg/L	1.0 mg/L	C Loading Dock

2/23/2010	Aluminum	2.4 mg/L	0.75 mg/L	C Loading Dock
2/23/2010	Copper	0.13 mg/L	0.0636 mg/L	C Loading Dock
2/23/2010	Lead	0.54 mg/L	0.0816 mg/L	C Loading Dock
2/23/2010	Zinc	0.97 mg/L	0.117 mg/L	C Loading Dock
1/18/2010	Total Suspended Solids	350 mg/L	100 mg/L	Reed St. #2
1/18/2010	Copper	0.108 mg/L	0.0636 mg/L	Reed St. #2
1/18/2010	Lead	0.146 mg/L	0.0816 mg/L	Reed St. #2
1/18/2010	Total Suspended Solids	370 mg/L	100 mg/L	Baghouse
1/18/2010	Copper	0.076 mg/L	0.0636 mg/L	Baghouse
1/18/2010	Lead	0.483 mg/L	0.0816 mg/L	Baghouse
1/18/2010	Total Suspended Solids	140 mg/L	100 mg/L	A Warehouse
1/18/2010	Lead	0.095 mg/L	0.0816 mg/L	A Warehouse
1/18/2010	Total Suspended Solids	610 mg/L	100 mg/L	A Warehouse West Wall
1/18/2010	Copper	0.068 mg/L	0.0636 mg/L	A Warehouse West Wall
1/18/2010	Lead	0.143 mg/L	0.0816 mg/L	A Warehouse West Wall
1/18/2010	Total Suspended Solids	330 mg/L	100 mg/L	Reed St. #1
1/18/2010	Copper	0.085 mg/L	0.0636 mg/L	Reed St. #1
1/18/2010	Lead	0.163 mg/L	0.0816 mg/L	Reed St. #1
4/7/2009	Total Suspended Solids	690 mg/L	100 mg/L	A Warehouse
4/7/2009	Specific Conductivity	390 µmho/cm	200 µmho/cm (proposed)	A Warehouse
4/7/2009	Copper	0.1 mg/L	0.0636 mg/L	A Warehouse
4/7/2009	Total Suspended Solids	280 mg/L	100 mg/L	C Warehouse
4/7/2009	Specific Conductivity	290 µmho/cm	200 µmho/cm (proposed)	C Warehouse
4/7/2009	Copper	0.13 mg/L	0.0636 mg/L	C Warehouse
4/7/2009	Total Suspended Solids	180 mg/L	100 mg/L	D Warehouse
4/7/2009	Total Suspended Solids	1400 mg/L	100 mg/L	Baghouse
4/7/2009	Specific Conductivity	580 µmho/cm	200 µmho/cm (proposed)	Baghouse
4/7/2009	Copper	0.58 mg/L	0.0636 mg/L	Baghouse
4/7/2009	Lead	0.62 mg/L	0.0816 mg/L	Baghouse
4/7/2009	Total Suspended Solids	1500 mg/L	100 mg/L	A Warehouse W. Wall
4/7/2009	Specific Conductivity	690 µmho/cm	200 µmho/cm (proposed)	A Warehouse W. Wall
4/7/2009	Copper	0.64 mg/L	0.0636 mg/L	A Warehouse W. Wall
4/7/2009	Lead	0.26 mg/L	0.0816 mg/L	A Warehouse W. Wall

4/7/2009	Total Suspended Solids	610 mg/L	100 mg/L	Reed St. Driveway 1
4/7/2009	Specific Conductivity	590 µmho/cm	200 µmho/cm (proposed)	Reed St. Driveway 1
4/7/2009	Copper	0.42 mg/L	0.0636 mg/L	Reed St. Driveway 1
4/7/2009	Lead	0.12 mg/L	0.0816 mg/L	Reed St. Driveway 1
4/7/2009	Total Suspended Solids	1600 mg/L	100 mg/L	Reed St. Driveway 2
4/7/2009	Specific Conductivity	680 µmho/cm	200 µmho/cm (proposed)	Reed St. Driveway 2
4/7/2009	Copper	0.64 mg/L	0.0636 mg/L	Reed St. Driveway 2
4/7/2009	Lead	0.14 mg/L	0.0816 mg/L	Reed St. Driveway 2
2/11/2009	Total Suspended Solids	560 mg/L	100 mg/L	A Warehouse
2/11/2009	Specific Conductivity	280		A Warehouse
2/11/2009	Copper	0.42 mg/L	0.0636 mg/L	A Warehouse
2/11/2009	Lead	1.1 mg/L	0.0816 mg/L	A Warehouse
2/11/2009	Silver	0.8 mg/L	0.318 mg/L	A Warehouse
2/11/2009	Total Suspended Solids	300 mg/L	100 mg/L	C Warehouse
2/11/2009	Copper	0.18 mg/L	0.0636 mg/L	C Warehouse
2/11/2009	Lead	0.37 mg/L	0.0816 mg/L	C Warehouse
2/11/2009	pH	9.1 SU	6.0 – 9.0 SU	D Warehouse
2/11/2009	Total Suspended Solids	2100 mg/L	100 mg/L	D Warehouse
2/11/2009	Copper	0.72 mg/L	0.0636 mg/L	D Warehouse
2/11/2009	Lead	4.4 mg/L	0.0816 mg/L	D Warehouse
2/11/2009	Silver	0.57 mg/L	0.318 mg/L	D Warehouse
2/11/2009	Total Suspended Solids	120 mg/L	100 mg/L	Baghouse
2/11/2009	Copper	0.097 mg/L	0.0636 mg/L	Baghouse
2/11/2009	Lead	0.26 mg/L	0.0816 mg/L	Baghouse
2/11/2009	Total Suspended Solids	840 mg/L	100 mg/L	A Warehouse W. Wall
2/11/2009	Specific Conductivity	280 µmho/cm	200 µmho/cm (proposed)	A Warehouse W. Wall
2/11/2009	Copper	0.85 mg/L	0.0636 mg/L	A Warehouse W. Wall
2/11/2009	Lead	2.6 mg/L	0.0816 mg/L	A Warehouse W. Wall
2/11/2009	Silver	0.68 mg/L	0.318 mg/L	A Warehouse W. Wall
2/11/2009	Total Suspended Solids	1400 mg/L	100 mg/L	Reed St. Driveway

				1
2/11/2009	Specific Conductivity	240 µmho/cm	200 µmho/cm (proposed)	Reed St. Driveway 1
2/11/2009	Copper	0.65 mg/L	0.0636 mg/L	Reed St. Driveway 1
2/11/2009	Lead	2.1 mg/L	0.0816 mg/L	Reed St. Driveway 1
2/11/2009	Silver	0.42 mg/L	0.318 mg/L	Reed St. Driveway 1
2/11/2009	Total Suspended Solids	270 mg/L	100 mg/L	Reed St. Driveway 1
2/11/2009	Copper	0.25 mg/L	0.0636 mg/L	Reed St. Driveway 1
2/11/2009	Lead	0.24 mg/L	0.0816 mg/L	Reed St. Driveway 1
1/16/2008	pH	5.86 SU	6.0 - 9.0 SU	A Yard
1/16/2008	Total Suspended Solids	104 mg/L	100 mg/L	A Yard
1/16/2008	pH	5.89 SU	6.0 - 9.0 SU	C Yard
1/16/2008	Total Suspended Solids	106 mg/L	100 mg/L	C Yard

The information in the above table reflects data gathered from ECS's self-monitoring during the 2007-2008, 2008-2009, 2009-2010, 2010-2011, and 2011-2012 wet seasons. GCM alleges that during each of those rainy seasons and continuing through today, ECS has discharged storm water contaminated with pollutants at levels that exceed one or more applicable EPA Benchmarks, including but not limited to each of the following:

- pH – 6.0 – 9.0 SU
- Total Suspended Solids – 100 mg/L
- Oil & Grease – 15 mg/L
- Chemical Oxygen Demand – 120 mg/L
- Iron – 1.0 mg/L
- Aluminum – 0.75 mg/L
- Copper – 0.0636 mg/L
- Lead – 0.0816 mg/L
- Zinc – 0.117 mg/L
- Cadmium – 0.0159 mg/L
- Silver – 0.318 mg/L
- Magnesium – 0.0636 mg/L
- Mercury – 0.0024 mg/L
- Selenium – 0.2385 mg/L
- Specific Conductivity – 200 µmho/cm (proposed)

GCM's investigation, including its review of ECS's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality

standards, EPA's benchmark values and the State Board's proposed benchmark for electrical conductivity, indicates that ECS has not implemented BAT and BCT at the Facility for its discharges of total suspended solids, specific conductivity, chemical oxygen demand, oil & grease, iron, aluminum, copper, lead, zinc, cadmium, selenium, silver, magnesium, mercury, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. ECS was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, ECS is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. GCM alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since July 16, 2007 and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which GCM alleges that ECS has discharged storm water containing impermissible levels of total suspended solids, specific conductivity, chemical oxygen demand, oil & grease, iron, aluminum, copper, lead, zinc, cadmium, selenium, silver, magnesium, and mercury in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.[5]

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, ECS is subject to penalties for violations of the General Permit and the Act since July 16, 2007.

B. Failure to Analyze for Mandatory Parameters

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). Collected samples must be analyzed for TSS, pH, specific conductance, and either total organic carbon or O&G. *Id.* at Section B(5)(c)(i). Facilities also must analyze their storm water samples for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id.* at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id.* at Section B(5)(c)(iii); *id.*, Table D. Facilities within SIC Code 5093, including ECS, must analyze each of its storm water samples for chemical oxygen demand, iron, lead, zinc, copper, and aluminum. *Id.*, Table D (Sector N). Facilities within SIC Code 4953, including ECS, must analyze each of its storm water samples

[5] The rain dates are all the days when 0.1" or more rain fell as measured by a weather station nearby the facility located at the following coordinates: **Latitude:** 37 deg 09 min N **Longitude:** 121 deg 38 min W.

for ammonia, magnesium, chemical oxygen demand, arsenic, cadmium, cyanide, lead, mercury, selenium, and silver.

GCM's review of ECS's monitoring data indicates that you have failed to analyze its storm water samples for the following parameters during the times indicated over the past five years:

- **Iron** – ECS failed to analyze for iron in all storm water samples taken during the 2010-2011, 2008-2009, and 2007-2008 wet seasons; and in all samples taken on January 18, 2010 (during the 2009-2010 wet season).
- **Oil & Grease** – ECS failed to analyze for oil & grease in all of the storm water samples it took on February 23, 2010 (during the 2009-2010 wet season).
- **Chemical Oxygen Demand** – ECS failed to analyze for chemical oxygen demand in all storm water samples taken during the 2008-2009 and 2007-2008 wet seasons; and in all samples taken on January 18, 2010 (during the 2009-2010 wet season).
- **Aluminum** – ECS failed to analyze for aluminum in all storm water samples taken during the 2008-2009 and 2007-2008 wet seasons; and in all samples taken on January 18, 2010 (during the 2009-2010 wet season).
- **Lead** – ECS failed to analyzed for lead in its storm water sample taken on January 16, 2008, at Outfall "C Yard."
- **Zinc** – ECS failed to analyze for zinc in all storm water samples taken during the 2008-2009 and 2007-2008 wet seasons; and in all samples taken on January 18, 2010 (during the 2009-2010 wet season).
- **Cadmium, Selenium, Magnesium, Mercury, Ammonia, Arsenic, Cyanide** – On information and belief, GCM alleges that ECS is a hazardous waste storage or disposal facility or otherwise engages in activities subject to SIC Code 4953. ECS has thus failed to analyze its storm water samples for cadmium, selenium, magnesium, mercury, ammonia, arsenic, and cyanide in all samples taken during the 2007-2008, 2008-2009, and 2009-2010 wet seasons.

Each of these failures is a violation of Section B(5)(a) of the General Permit. Based on the number of outfalls the Facility reported that it had each wet season, this results in a total of 275 distinct violations.

These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, ECS is subject to penalties for violations of the General Permit and the Act since July 16, 2007.

C. Failure to Develop and Implement an Adequate Monitoring and Reporting Program

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and

authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event."

The above referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by ECS is not representative of the quality of the Facility's various storm water discharges and that the Facility failed to monitor all qualifying storm water discharges, GCM alleges that the Facility's monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit.

GCM also alleges that ECS has failed to properly conduct its monthly visual observations. For example, on October 31, 2011, the Facility did not report the observance of any sheen in the discharge at 735 Reed Street. However, the Facility also reported an oil and grease level of 74 mg/L in its storm water that day. ECS alleges that it would be impossible not to observe a sheen with an oil and grease measurement of that magnitude.

GCM also alleges that ECS has failed to conduct monthly visual observations of all storm water discharge locations at the Facility during the following months:

- 2010-2011 wet season – January and April
- 2009-2010 wet season – October, November, December, March, April, and May
- 2008-2009 wet season – October, November, December, January, March, and May
- 2007-2008 wet season – October, November, December, February, March, April, and May.

This results in at least twenty-one distinct violations of the General Permit. The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, ECS is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since July 16, 2007.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Section A and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

GCM's investigation of the conditions at the Facility as well as ECS's Annual Reports indicate that ECS has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. ECS has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. ECS has been in continuous violation of Section A and Provision E(2) of the General Permit every day since July 16, 2007, at the very latest, and will continue to be in violation every day that ECS fails to prepare, implement, review, and update an effective SWPPP. ECS is subject to penalties for violations of the Order and the Act occurring since July 16, 2007.

E. Failure to File Change of Information to NOI Form

Attachment 3 to the General Permit requires industrial dischargers to use an NOI form to report changes regarding the NOI or the site map to the State Board. GCM alleges that since May 20, 1997, ECS has not filed any supplemental NOI forms to indicate changes to information in its NOI form and its site map. Changes that ECS would be required to report include the following:

- **Changes to the site map.** In its 2007-2008 Annual Report, ECS indicated that they recently acquired a new building and would be adding new storm drains. However, no new site map was submitted to the State Board.

- **Changes to the SIC Code.** While ECS's NOI only indicates that its SIC code is 3341, in its 2007-2008 Annual Report, the Facility began reporting that it was also covered by SIC code 5093. In its 2008-2009 Annual Report, ECS stopped indicating that it was covered by SIC code 3341. In its 2010-2011 Annual Report, ECS reported that it was also covered by SIC code 4953. In its 2011-2012 Annual Report, ECS reported that is was only covered by SIC code 5093. ECS never submitted a new NOI to the State Board indicating these changes or the presence of activities under SIC Codes in addition to SIC Code 3341.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, ECS is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since July 16, 2007.

F. Failure to File True and Correct Annual Reports.

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For the last five years, ECS and its agents, Kenneth Taggart, Edward Sawicki, Kevin Lloyd, and Gary Winslow, inaccurately certified in ECS's Annual Reports that the facility was in compliance with the General Permit. Consequently, ECS has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time ECS failed to submit a complete or correct report and every time ECS or its agents falsely purported to comply with the Act. ECS is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since July 16, 2007.

IV. Persons Responsible for the Violations.

GCM puts ECS, James Taggart, Kenneth Taggart, and Gary Winslow on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, GCM puts ECS, James Taggart, Kenneth Taggart, and Gary Winslow on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Parties.

The name, address and telephone number of Global Community Monitor is as follows:

Denny Larson, Executive Director
Global Community Monitor
P.O. Box 1784
El Cerrito, CA 94530
Tel. (510) 233-1870

VI. Counsel.

GCM has retained our office to represent it in this matter. Please direct all communications to:

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VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects ECS to a penalty of up to $32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit through January 12, 2009, and a maximum of $37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, GCM will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

GCM believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. GCM intends to file a citizen suit under Section 505(a) of the Act against ECS and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, GCM would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, GCM suggests that you initiate those discussions within the next 20 days so

that they may be completed before the end of the 60-day notice period. GCM does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Michael R. Lozeau
Lozeau Drury LLP
Attorneys for Global Community Monitor

cc via first-class mail: CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833 (Agent for Service of Process for ECS Refining, LLC

SERVICE LIST

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
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Eric Holder, U.S. Attorney General
U.S. Department of Justice
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Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT A

Rain Dates, ECS, Santa Clara, California

9/22/2007	11/16/2008	1/29/2009
10/10/2007	11/17/2008	2/2/2009
10/12/2007	11/18/2008	2/3/2009
11/10/2007	11/26/2008	2/4/2009
11/11/2007	11/28/2008	2/5/2009
12/6/2007	12/3/2008	2/6/2009
12/7/2007	12/4/2008	2/7/2009
12/17/2007	12/10/2008	2/8/2009
12/18/2007	12/11/2008	2/9/2009
12/20/2007	12/12/2008	2/10/2009
12/29/2007	12/20/2008	2/12/2009
1/3/2008	12/22/2008	2/13/2009
1/4/2008	12/23/2008	2/14/2009
1/5/2008	12/24/2008	2/15/2009
1/6/2008	12/25/2008	2/16/2009
1/21/2008	12/29/2008	2/17/2009
1/22/2008	12/30/2008	2/18/2009
1/24/2008	1/1/2009	2/19/2009
1/25/2008	1/2/2009	2/20/2009
1/26/2008	1/3/2009	2/21/2009
1/27/2008	1/4/2009	2/23/2009
1/31/2008	1/5/2009	2/28/2009
2/2/2008	1/6/2009	3/1/2009
2/3/2008	1/7/2009	3/2/2009
2/19/2008	1/9/2009	3/3/2009
2/21/2008	1/10/2009	3/4/2009
2/22/2008	1/12/2009	3/5/2009
2/23/2008	1/13/2009	3/6/2009
2/24/2008	1/14/2009	3/7/2009
3/15/2008	1/15/2009	3/8/2009
10/26/2008	1/16/2009	3/10/2009
10/28/2008	1/17/2009	3/11/2009
10/30/2008	1/19/2009	3/13/2009
11/10/2008	1/21/2009	3/15/2009
11/11/2008	1/23/2009	3/16/2009
11/12/2008	1/24/2009	3/21/2009
11/13/2008	1/25/2009	3/22/2009
11/14/2008	1/27/2009	3/24/2009
11/15/2008	1/28/2009	3/25/2009

ATTACHMENT A

Rain Dates, ECS, Santa Clara, California

3/26/2009	3/2/2010	3/16/2011
3/27/2009	3/3/2010	3/18/2011
3/28/2009	3/12/2010	3/19/2011
10/13/2009	3/30/2010	3/20/2011
10/14/2009	4/4/2010	3/21/2011
10/23/2009	4/5/2010	3/23/2011
10/24/2009	4/11/2010	3/24/2011
10/26/2009	4/12/2010	3/25/2011
10/30/2009	4/20/2010	3/26/2011
12/7/2009	4/27/2010	4/7/2011
12/10/2009	5/25/2010	5/14/2011
12/11/2009	10/22/2010	5/16/2011
12/12/2009	10/23/2010	5/17/2011
12/13/2009	10/24/2010	6/1/2011
12/26/2009	11/19/2010	6/4/2011
12/27/2009	11/20/2010	6/28/2011
12/29/2009	11/21/2010	10/5/2011
1/1/2010	11/22/2010	11/5/2011
1/2/2010	11/23/2010	11/11/2011
1/3/2010	11/27/2010	11/19/2011
1/12/2010	12/5/2010	11/20/2011
1/13/2010	12/14/2010	1/20/2012
1/17/2010	12/17/2010	1/21/2012
1/18/2010	12/18/2010	1/23/2012
1/19/2010	12/19/2010	2/13/2012
1/20/2010	12/21/2010	2/29/2012
1/21/2010	12/22/2010	3/16/2012
1/22/2010	12/25/2010	3/17/2012
1/26/2010	12/28/2010	3/25/2012
1/29/2010	12/29/2010	3/27/2012
2/4/2010	1/1/2011	3/28/2012
2/5/2010	1/2/2011	3/31/2012
2/6/2010	1/30/2011	4/10/2012
2/9/2010	2/16/2011	4/11/2012
2/21/2010	2/17/2011	4/12/2012
2/23/2010	2/18/2011	4/13/2012
2/24/2010	2/19/2011	4/25/2012
2/26/2010	2/24/2011	6/4/2012
2/27/2010	2/25/2011	